

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ROBERT PROBERT,  
LORETTA E. PROBERT,  
GENE GRISSOM,  
SANDRA GRISSOM, and others  
similarly situated,

Plaintiffs,

vs.

FAMILY CENTERED SERVICES OF  
ALASKA, INC., and DOES I to X  
(Managerial Employees Jointly  
Liable),

Defendants.

Case No. 4:07-cv-0030-RRB

**ORDER REGARDING**  
**PENDING MOTIONS**

Previously, this Court has found that the applicability of the FLSA to institutions such as the Therapeutic Family Homes is a "controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." Accordingly, the motion for an immediate appeal at Docket 95 was granted at Docket 112. Meanwhile, five motions are pending before this Court.

FCS has petitioned the Ninth Circuit for permission to file an interlocutory appeal, and requests, at Docket 117, that

this Court stay its proceedings pending the disposition of the petition and, if granted, the appeal. FCS argues, at Docket 117, that this case raises serious legal questions that are subject to de novo review, that FCS has a strong likelihood of prevailing on appeal, and will suffer irreparable harm unless a stay is granted.

Rather than oppose the Motion to Stay, Plaintiffs, at Docket 120, filed a Motion to Strike Motion to Stay, on the grounds that the Ninth Circuit still may decline to grant an interlocutory appeal. Plaintiffs argue, at Docket 120, it is "premature and speculative to consider staying the trial court proceedings at this time. If and when such appeal is granted, Defendant can re-file its Motion to Stay."

The Court agrees with Defendants that continued litigation pending appeal is wasteful of the parties' limited resources, as well as of the judicial resources, while this matter is pending before the Ninth Circuit. If the Ninth Circuit disagrees with this Court and finds that the FLSA does not apply to the employees in this case, it would have been a waste of time to calculate the damages to which Plaintiffs may not be eligible. Accordingly, the Court orders as follows:

1. The Motion to Stay Proceedings Pending Appeal at **Docket 117** is **GRANTED**.

2. The Motion to Strike at **Docket 120** is **DENIED**.

3. Plaintiffs' Motions to Continue Due Date for Opposition to Motion to Stay, **Dockets 119 & 121**, are **DENIED AS MOOT**.

4. The Motion for Summary Judgment on Wages and Overtime Due at **Docket 102** is **DENIED WITHOUT PREJUDICE**, subject to re-filing pending the outcome of the appeal.

**IT IS SO ORDERED.**

ENTERED this 15<sup>th</sup> day of June, 2009.

S/RALPH R. BEISTLINE  
UNITED STATES DISTRICT JUDGE